
(1994) 01 P&H CK 0122

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11681 of 1992

Kuldip Kumar Sharma

APPELLANT

Vs

PEPSU Road Transport Corpn. and Another

RESPONDENT

Date of Decision : 07-01-1994

Acts Referred:

Pepsu Road Transport Corporation (Conditions of Appointment and Service)
Regulations, 1981 — Regulation 22

Citation : (1995) 1 LLJ 532 : (1994) 106 PLR 479

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : Ravinder Chopra and R.S. Chauhan, for the Appellant; R.S. Ahluwalia, for the Respondent

Final Decision : Allowed

Judgement

V.K. Jhanji, J.—In this writ petition, petitioner who at the relevant time was Section Officer in the Pepsu Road Transport Corporation, has impugned orders of respondent No. 1 vide which the petitioner was reverted to the lower rank and was ordered not to be paid anything over and above the subsistence allowance during the suspension period.

2. In brief, the facts are that on July 13, 1971 petitioner joined Pepsu Road Transport Corporation (hereinafter referred to as the Corpora-lion) as a Clerk, and was promoted as Assistant in the year 1979. Thereafter, in the year 1983, petitioner qualified the Punjab State Accounts Service Examination and was promoted as Section Officer. While the petitioner was working as Section Officer, he was charge-sheeted for major misconduct, the details of which have been given in the charge-sheet dated September 7, 1988. Petitioner submitted his reply to the Charge-sheet and on consideration of the reply, an Enquiry Officer was appointed to hold the enquiry. Though, the Enquiry Officer, in his report submitted to the disciplinary Authority, exonerated the petitioner of the charges levelled against him, yet the Disciplinary Authority did not agree with the report

of the Enquiry Officer and, therefore, served a show-cause notice upon the petitioner as to why he should not be removed from service. Petitioner submitted his reply to the show-cause notice. The Disciplinary Authority in its order dated May 17, 1991 held that Charge No. 2, i.e. obtaining payment fraudently, stands proved to the extent that the petitioner instead of getting the amount of bills adjusted, had withdrawn the amount to which he was not entitled to. Further, in the opinion of the Disciplinary Authority, removal from service was considered too harsh a penalty and, thus, petitioner was ordered to be reverted to the lower rank from which he was promoted as Section Officer. Petitioner was also held not entitled to be paid anything over and above the subsistence allowance already drawn during the suspension period. Against the order of the Disciplinary Authority, petitioner filed an appeal before respondent No. 2, who dismissed the same vide his order dated July 1, 1992. The petitioner has impugned the order of the Disciplinary Authority as well as order of the Appellate Authority (respondent No. 2) in the present writ petition.

3. In reply, the respondents have stated that petitioner was held guilty of the charges by the Punishing Authority on the basis of material available on record. According to the respondents, the Punishing Authority passed a speaking and well-reasoned order after applying its mind to the facts and circumstances of the case.

4. Mr. Ravinder Chopra, Advocate, has impugned the order of reversion of the petitioner on the ground that the same is against the provisions of the Pepsu Road Transport Corporation (Conditions of Appointment and Service Regulations), 1981, (hereinafter referred to as the Regulations). On the strength of Regulation 22(j) and (k), the counsel contended that there is no provision in the Regulations that if the punishing Authority disagrees with the report of the Enquiry Officer, then what provision is to be followed. In the absence of any such provision, the punishing Authority is bound to accept the report of the Enquiry Officer. His second contention was that if an employee is to be reverted to a lower rank, it has to be for a specific period, but in the order of the punishing Authority, no such time has been specified, meaning thereby that the petitioner would not be promoted to the post of Section Officer throughout his career. In support of this contention, he referred to Regulation 27 of the Regulations. His last contention was that once the punishing Authority ordered the reinstatement of the petitioner in service against the rank to which he was ordered to be reverted, then under no circumstances, the punishing Authority could order that the petitioner would not be paid anything over and above the subsistence allowance already drawn during the suspension period. In support of this argument he placed reliance upon a judgment in *Bansari Lal v. Union of India* 1984 (2) S.L.R. 413, and *Hem Raj Goel v. State of Punjab* 1992(4) S.L.R. 258.

5. In order to appreciate the first contention of learned counsel for the petitioner, it becomes necessary to notice the provisions of Regulation 22(j) and (k) which are as follows:-

"22(j) The enquiry officer shall on the conclusion of the enquiry submit his report in writing giving his findings with reasons therefore to the authority, which appointed the enquiry officer.

22(k) In case the management decides to impose any of the major punishments on the accused employee on the basis of the findings of the enquiry officer, it shall supply a copy of the report of the enquiry officer to the accused employee."

The above-quoted regulation nowhere provides that the Disciplinary Authority is bound to accept the report of the Enquiry Officer. Regulation only provides that the Enquiry Officer, on the conclusion of the enquiry, shall submit his report in writing to the Authority, and on receipt of the report, in case the management decides to impose any of the major punishments on the basis of report of the Enquiry Officer, a copy of the report shall be supplied to the employee. The Disciplinary Authority is not bound by the Enquiry Officer's report. The Disciplinary Authority has to consider the evidence available on record, and though it has to consider the Enquiry Officer's report, yet it is not bound by the latter's finding. In the present case, the Disciplinary Authority has given detailed and valid reasons for disagreeing with the report of the Enquiry Officer. These reasons along with report were supplied to the petitioner and on consideration of the reply submitted by the petitioner, the Disciplinary Authority decided to revert the petitioner to the lower rank. It is not the case of the petitioner that no opportunity of hearing was afforded to him before passing of the impugned order. Thus, there is no merit in the first contention of counsel for the petitioner. As regards the second contention of counsel, suffice it to say, just because the employee has been reverted as a result of enquiry, without specifying the period for which order of reversion would remain effective, it cannot be said that for all times to come, the employee stands reverted. In such a situation, as and when next promotion is made, the employee would be entitled to be considered for promotion, if he is found fit for promotion.

As regards the last contention I find from the averments made in the writ petition that the petitioner has specifically alleged that decision to deny him the full salary for the period during which he remained under suspension was arrived at without giving him an opportunity to show-cause against it. Respondents have specifically denied this averment in their written statement. In absence of any show-cause notice in this regard, it stands established that no opportunity of hearing was given to the petitioner before declaring that he would be paid subsistence allowance only for the period of suspension. This part of the order cannot be sustained because if the employee is to be disallowed the arrears of salary and allowances and he has to be paid nothing beyond the subsistence allowance, an opportunity of hearing has to be granted to him, lest the impugned action will be wholly arbitrary and violative of principles of natural justice. Thus, this part of the order cannot be maintained and is liable to be quashed.

6. Consequently, the writ petition is allowed only to the extent that orders, Annexure P-4 and P-5 vide which the petitioner was ordered not to be paid

anything over and above the subsistence allowance already drawn during the suspension period, shall stand quashed. The arrears of salary for the period the petitioner remained under suspension, shall be paid to him within six months.